

an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by § 260.5b-1 through § 260.5b-3 of this chapter and by the EDGAR Filer Manual.

(26) *Invitations for competitive bids.* If the registration statement covers securities that the small business issuer is offering at competitive bidding, any invitation for competitive bid that the small business issuer will send or give to any person shall be filed.

(27) through (98) [Reserved]

(99) *Additional exhibits.* (i) Any additional exhibits if listed and described in the exhibit index.

(ii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10-QSB or the Form 10-KSB, as appropriate, covering the period in which the earnings statement was released.

[57 FR 36449, Aug. 13, 1992, as amended at 57 FR 48150, Oct. 21, 1992; 58 FR 14660, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993; 58 FR 26383, May 3, 1993; 58 FR 27469, May 10, 1993; 59 FR 36260, July 15, 1994; 59 FR 67759, Dec. 30, 1994; 60 FR 26614, May 17, 1995; 61 FR 24654, May 15, 1996; 61 FR 30401, June 14, 1996; 62 FR 36455, July 8, 1997; 65 FR 24799, Apr. 27, 2000; 67 FR 246, Jan. 2, 2002]

EDITORIAL NOTE: At 65 FR 24799, Apr. 27, 2000, in § 228.601, paragraph (a), the table was amended by removing the entries for exhibits (27) and (28) and footnote \*\*\*\*\*; however, this is a photographed table, thus the entries could not be removed.

**§ 228.601T (Item 601T) Item 601T of Regulation S-B.**

Any issuer that may rely upon the alternative disclosure requirement of § 228.304T shall comply with § 228.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the registrant in response to § 228.304(c), the issuer must comply with § 228.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 228.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

[67 FR 13536, Mar. 22, 2002]

EFFECTIVE DATE NOTE: At 67 FR 13536, Mar. 22, 2002, § 228.601T was added effective Mar. 18, 2002 through Dec. 31, 2002.

**§ 228.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.**

Give the following information for all securities that the small business issuer sold within the past three years without registering the securities under the Securities Act.

(a) The date, title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. If the small business issuer did not publicly offer any securities, identify the persons or class of persons to whom the small business issuer sold the securities.

(c) For securities sold for cash, the total offering price and the total underwriting discounts or commissions. For securities sold other than for cash, describe the transaction and the type and amount of consideration received by the small business issuer.

(d) The section of the Securities Act or the rule of the Commission under which the small business issuer claimed exemption from registration and the facts relied upon to make the exemption available.

(e) If the information called for by this paragraph (e) is being presented on Form 8-K, Form 10-QSB, Form 10-Q, Form 10-KSB or Form 10-K (§§ 249.308, 249.308b, 249.308a, 249.310b or 249.310) under the Exchange Act, and where the securities sold by the registrant are